IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.3687 OF 2003
IN
SUIT NO.3927 OF 2003

Dhondu D. Mayekar & Ors. ....Plaintiffs
V/s.
Sudhakar D. Mayakar & Ors. ....Defendants

Ms.S.P. Nanavati for the Plaintiffs.
Mr.Deepak Trivedi with Mr.V.S. Hadade for Defendant No.2.

CORAM : S.J. VAZIFDAR, J.
DATED : 17TH NOVEMBER, 2005.

P.C. :

1. The suit is filed for a declaration that the Plaintiffs and the Defendants each have 1/12th share in the estate of the deceased Dinkar Dhondu Mayekar. Four Plaintiffs and Defendant No.8 are the children of the deceased from his first wife. Defendant Nos.1 to 7 are the children of the deceased from his second wife. The deceased expired on 9th November, 1990.

2. Mr.Trivedi, the learned counsel appearing on behalf of Defendant No.2, who is in possession of the properties in Bombay, states that the residential premises have been transferred in his client's name and that the same is and has been in his exclusive

possession. He makes a statement that pending the hearing and final disposal of the suit, Defendant No.2 will not transfer, alienate, encumber, sell or create any third party right, title and/or interest in, to, upon or in respect of both the said properties. The statement is accepted.

3. As far as remaining Defendants are concerned, no affidavit in reply has been filed. The shares of the parties are therefore at least at this stage admitted. The Plaintiffs' interest in the estate of the deceased is therefore at this stage admitted.

4. Ms.Nanavati, the learned counsel appearing on behalf of the Plaintiffs states that it is only after 2003 that the Plaintiffs had been denied enjoyment of the property in possession of the other Defendants.

5. In the circumstances, the ends of justice would be met by making the Notice of Motion absolute in terms of prayer (b) except the portion bracketed in red. The Notice of Motion is also made absolute in terms of prayer (c). It should be noted that despite ad-interim order dated 17th December, 2003 directing the Defendants to comply with prayer (c), they have failed and neglected to do so. They are now directed

to comply with prayer (c) of the Notice of Motion within eight weeks from today. Liberty to apply in the event of the Defendants failing to do so. It is clarified that prayer (b) of the Notice of Motion is made absolute against all the Defendants except Defendant No.2, in respect of whom the aforesaid statement has been accepted.

6. The Notice of Motion is accordingly disposed of.